

## **C. Cassational Appeals**

Participants in a case have the right to make an appeal to the cassational court — that is, an appeal concerning the proper application of the law by the lower court(s). A cassational appeal may be filed with respect to a decree of an appeals court, and may also be filed with respect to the decision of the court of first instance that has entered into force.<sup>2</sup> In other words, it is possible to file a cassational appeal — complaining of improper application of the law by the court of first instance — even if the decision of the first court was not appealed through the procedure described in Section B, above. The arbitrazh courts which hear cassational appeals are the federal arbitrazh courts for the various “circuits” or areas. The areas served by the ten different circuit courts are defined by the constitutional law on the arbitrazh courts.

### **1. Form, Period and Place of Submission**

A cassational appeal is not submitted directly to the circuit court, but rather to the arbitrazh court that issued the decision being appealed. That court must send the appeal to the corresponding circuit court, together with the record of the case, within five days of

---

<sup>2</sup> Decisions issued in the first instance by the Higher Arbitrazh Court are not subject to consideration by the circuit courts that generally hear cassational complaints. An appeal of such a decision must be directed to the Higher Arbitrazh Court itself.

## **CHECKLIST FOR A CASSATIONAL APPEAL FILING**

### **Information Required in a Cassational Appeal Filing**






- ☐ the name of the court to which the appeal is addressed
- ☐ the name of the person submitting the appeal and the names of the other participants in the case
- ☐ the name of the arbitrazh court which issued the decision or decree being appealed, number of the case, date of issuance of the decision or decree, and subject of the dispute
- ☐ a statement of the violation of the substantive or procedural law or improper application of the law which is the basis for the appeal, and the demands of the appellant
- ☐ a list of documents appended to the complaint

### **Documents Required as Appendices to the Filing**

- ☐ evidence of payment of the filing fee
- ☐ evidence of the sending of the complaint to the other parties in the case
- ☐ authorization for a representative to sign and file the cassational appeal (if applicable)

its receipt. The cassational appeal must be submitted within one month of the entry of the decision or decree into force, and must be signed by the person submitting the appeal or by his representative.

The complaint may be returned to the appellant for reasons analogous to those applicable to petitions of suit and first appeals, specifically:

-  failure to sign or improper signature;
-  submission directly to the cassational court instead of through the original court as required;
-  absence of evidence of payment of the filing fee (or a petition on reduction, delay or installment payments);
-  absence of evidence that copies were sent to the other participants in the case; and
-  submission of the cassational appeal after the period for appeal (without a petition for renewal).

In addition, a cassational complaint may be returned to the appellant if the complaint does not describe the violation or improper application of the law by the lower court that gives rise to the cassational complaint. As a rule, it is the court of the first instance that

received the cassational complaint that returns the complaint on the grounds listed. The cassational court may also return the complaint on the same grounds, if the flaw or omission in the filing was not discovered by the court of first instance. A sample cassational complaint appears as Appendix N to the Handbook.

## **2. Procedure and Period for Consideration**

If the case is accepted for consideration, the circuit (cassational) court issues a determination on its acceptance, stating a date and time for its consideration. The person submitting the cassational appeal has the right to withdraw it at any time prior to the issuance of the decision. The appeal must be considered within a one month period of its receipt together with the materials of the case by the circuit court. The consideration of the case by the court takes place according to the general rules established for cases in the courts of first instance, with the exceptions noted in Chapter 21 of the APC (such as the one month time frame for consideration, rather than the two month time frame for cases heard in the first instance) and with the omission of rules not relevant to the cassational process (such as those concerning the taking of evidence). The cassational court has the right to suspend the execution of the court decision or decree being appealed during its consideration of the cassational appeal, but only on the basis of a petition from one of the participants in the case requesting such suspension.

## **3. Grounds for Cassational Appeal**

Violation or improper application of the substantive or procedural law are the only grounds for a cassational appeal. No arguments may be made at the cassational stage concerning lack of proof of the circumstances of the case, failure of the conclusions of the court to correspond to the materials and circumstances of the case, or other matters based solely on disputes about the facts and evidence in the case. The application by the lower courts of procedural law concerning evidence and the application of the law to the facts of the case can, however, be the subject of consideration in the cassational instance. Thus, evidentiary matters may still arise at the cassational stage. Cassational courts do not, however, take new evidence in a case.

A violation or improper application of procedural law may serve as the grounds for amendment or reversal of a lower court decision only in the case that it led or might have led to the issuance of an incorrect decision/decreed. The same procedural law violations which lead to an unconditional reversal of the decision of a court of first instance by the appellate instance, however, will also serve as grounds for the reversal by the cassational instance of the decision of the court in the first instance or of the decree of the appellate instance, without inquiry into their capacity to lead to a legally incorrect result.

## **4. Authority of the Cassational Instance**

The cassational instance issues its decision in the form of a “decree” and has the power to:

- leaves the lower court decision without change, or leaves one of two different lower court decisions/decrees in force, reversing the other;
- reverses the decision of the lower court in part or in full and makes a new decision;
- reverses the decision of the lower courts and returns the case for a new consideration in the same court in which the reversed decision/decreed was issued. This may be done if the decision or decree was without sufficient basis;
- amends the decision of the lower court; or
- reverses the decision of the lower court in part or in full and terminates proceedings in the case or leaves the case without consideration.

## 5. Content of the Decree of the Cassational Court

The decree of the cassational court enters into force from the time of its issuance. The instructions in the decree concerning actions to be taken by the arbitrazh court (e.g. consider the application of a particular legal rule, admit evidence improperly excluded) in

### REQUIRED CONTENT OF A DECREE OF THE CASSATIONAL COURT

- ▣ the name of the court issuing the decree, number of the case, date of issuance of the decree, composition of the court, and names of those present with indications of their positions and authorities
- ▣ the name of the person who filed the cassational appeal and the other participants in the case
- ▣ the name of the arbitrazh court that considered the case in the first and appellate instances, number of the case, date of issuance of the appealed decision or decree, and the names of the judges issuing it
- ▣ a short description of the substance of the decision or decree appealed
- ▣ the basis on which the cassational appeal was filed
- ▣ arguments in the response to the appeal
- ▣ explanations of those present during the consideration of the case
- ▣ reasons for the court not to apply laws or legal acts referred to by the parties or on which the lower courts relied in their decisions
- ▣ if the lower court decision is reversed or amended, reasons for the disagreement of the cassational court with the conclusions of the lower court
- ▣ the final conclusions of the cassational court in the case
- ▣ a statement of the actions that must be performed by persons participating in the case and by the arbitrazh court, if the case is returned for a new consideration by a lower court
- ▣ division of court costs among participants

a new consideration are binding upon the court. However, the cassational court cannot pre-decide the case for the lower court, indicating what its decision must be, nor can it give instructions to the lower court concerning the probative value of specific evidence or whether specific circumstances were or were not proven in the given case. A sample decree of a circuit arbitrazh court (the cassational instance) appears as Appendix O to the Handbook.

Determinations of the arbitrazh courts concerning procedural matters that are subject to appeal are also subject to cassational appeal. Cassational appeal of a determination is governed by the same rules as those for cassational appeal of decisions and decrees.